

BEFORE  
THE PUBLIC SERVICE COMMISSION OF  
SOUTH CAROLINA  
DOCKET NO. 2003-226-C - ORDER NO. 2003-680 ✓  
NOVEMBER 20, 2003

IN RE:	Application of Telecon Communications	)	ORDER GRANTING
	Corp. for a Certificate of Public Convenience	)	CERTIFICATE
	and Necessity to Provide Resold and	)	
	Facilities-Based Local Exchange and	)	
	Interexchange Telecommunications Services	)	
	and for Flexible Regulation and Modified	)	
	Alternative Regulation	)	

This matter comes before the Public Service Commission of South Carolina (the Commission) by way of the Application of Telecon Communications Corp. ("Telecon" or "the Company") for authority to provide resold and facilities-based local exchange and intrastate interexchange telecommunications services within the State of South Carolina. The Company requests that the Commission regulate its local telecommunications services in accordance with the principles and procedures established for flexible regulation in Order No. 98-165 in Docket No. 97-467-C. In addition, the Company requests that the Commission regulate its business service offerings identical to that granted to AT&T Communications in Order Nos. 95-1734 and 96-55 in Docket No. 95-661-C. The Application was filed pursuant to S.C. Code Ann. Section 58-9-280 (Supp. 2002), and the Rules and Regulations of the Commission.

By letter, the Commission's Executive Director instructed the Applicant to publish, one time, a prepared Notice of Filing in newspapers of general circulation in the areas affected by the Application. The purpose of the Notice of Filing was to inform

interested parties of the manner and time in which to file the appropriate pleadings for participation in the proceedings. The Applicant complied with this instruction and provided the Commission with proof of publication of the Notice of Filing. A Petition to Intervene was received from the South Carolina Telephone Coalition ("SCTC").

Counsel for SCTC filed with the Commission a Stipulation in which the Applicant stipulated that it would not seek authority in non-rural local exchange ("LEC") service areas of South Carolina and that it would not provide any local service to any customer located in a rural incumbent's service area, unless and until Telecon provided written notice of its intent to do so at least thirty (30) days prior to the date of the intended service. The Company also stipulated that it was not asking the Commission to make a finding at this time regarding whether competition is in the public interest for rural areas. Telecon agreed to abide by all State and Federal laws and to participate to the extent that it may be required to do so by the Commission in support of universally available telephone service at affordable rates. The SCTC withdrew its opposition to the granting of a statewide Certificate of Public Convenience and Necessity to the Company provided the conditions contained in the Stipulation are met. The Stipulation is approved and attached as Order Exhibit 1.

A hearing was commenced on October 8, 2003, at 10:30 a.m. in the Commission's Hearing Room. The Honorable Mignon Clyburn, Chairman, presided. Telecon was represented by John J. Pringle, Esquire. Scott Kellogg, Assistant Secretary and In-house Counsel for the Company, appeared and testified on behalf of the Company. Jocelyn Boyd, Staff Counsel, represented the Commission Staff.

Mr. Kellogg presented testimony to demonstrate the Company's financial, managerial, and technical ability to provide the telecommunications services for which authority is sought in South Carolina. The sole witness also presented testimony regarding his background and experience in business and telecommunications as well as that of the other executives of Telecon. According to the record, Mr. Kellogg and the other members of the executive staff of Telecon have worked for a variety of companies in the telecommunications industry for many years.

Telecon is a New York corporation that has received authorization to transact business within South Carolina. Regarding the services the Company seeks to provide in South Carolina, the testimony reveals that Telecon proposes to provide local exchange telecommunications service via the unbundled network platform ("UNE-P") and resold interexchange telecommunications services for the direct transmission and reception of voice and data between locations throughout the State of South Carolina. The Company intends to provide service primarily to business customers and to resell interexchange telecommunications services including travel service available through toll-free access. Service is to be provided twenty-four (24) hours per day, seven (7) days per week. As Telecon will be operating as a reseller of local exchange and long distance service, the Company's traffic will be routed entirely over the network of its underlying carriers. Additionally, Telecon will rely on its facilities-based underlying carriers for the operation and maintenance of the local exchange and interexchange networks.

The testimony reveals further that Telecon will at all times provide and market services in compliance with current Commission policies. In particular, the Company is

familiar with Commission Order No. 93-462 regarding resale of intraLATA telecommunications services and will attempt to comply with the terms of that Order in every respect possible. Additionally, Telecon at all times will provide interstate services in compliance with the FCC rules and regulations. The Company intends to market its services through direct sales by and through an independent contractor.

Telecon has requested waivers of certain Commission rules and regulations. Specifically, Telecon has requested a waiver of Regulation 103-610 which requires the maintenance of the company's books and records in South Carolina. The company has also requested that it be allowed to maintain its books and records under Generally Accepted Accounting Principles (GAAP) as opposed to the Uniform System of Accounting (USOA) as the books and records have been, and are maintained under GAAP. Additionally, the Company has requested a waiver of the requirement to publish a telephone directory, for a waiver of reporting requirements, and for a waiver of the requirement that it provide a copy of the Company's customer bill form for Commission approval.

Telecon's customer service representatives are available to assist the Company's customers and to promptly respond to all customer inquiries. The Company's toll free number will be printed on customers' monthly billing statement. Mr. Kellogg testified further that the Company's customer service representatives are prepared to respond to a broad range of service matters, including inquiries regarding the types of services offered by Telecon and the rates associated with the services; monthly billing statements,

problems or concerns pertaining to a customer's current service; and general service matters.

Mr. Kellogg testified that the residents of South Carolina will benefit from Telecon's service and presence in South Carolina. The testimony reveals that customers in the Company's service territory will receive increased choice, improved quality of service, and heightened opportunities to obtain improved technology in their homes and businesses. Further, Mr. Kellogg opined that the granting of the certificate of authority to provide local exchange service will offer increased efficiency to the State's telecommunications infrastructure through greater reliability of services and an increase in competitive choices. The testimony reveals the Company's application to provide telecommunication services in other jurisdictions has never been denied, and the Company agrees to abide by and comply with the Commission's rules, regulations, and Orders.

After full consideration of the applicable law, the Company's Application, and the evidence presented at the hearing, the Commission hereby issues its findings of fact and conclusions of law:

#### **FINDINGS OF FACT**

1. Telecon is organized as a corporation under the laws of the State of New York and is authorized to do business as a foreign corporation in the State of South Carolina by the Secretary of State.

2. Telecon is a provider of local exchange and interexchange telecommunications services and wishes to provide its services in South Carolina.

3. Telecon has the managerial, technical, and financial resources to provide the services as described in its Application.

4. The Commission finds that Telecon's "provision of service will not adversely impact the availability of affordable local exchange service." S.C. Code Ann. Section 58-9-280 (B)(3) (Supp. 2002).

5. The Commission finds that Telecon will support universally available telephone service at affordable rates.

6. The Commission finds that Telecon will provide services which will meet the service standards of the Commission.

7. The Commission finds that the provision of local exchange service by Telecon "does not otherwise adversely impact the public interest." S.C. Code Ann. Section 58-9-280 (B)(5) (Supp. 2002).

### **CONCLUSIONS OF LAW**

1. Based on the above findings of fact, the Commission determines that a Certificate of Public Convenience and Necessity should be granted to Telecon to provide competitive intrastate resold and non-facilities-based non-rural local exchange service in South Carolina. The terms of the Stipulation between Telecon and the SCTC are approved, and adopted as a part of this Order. Any proposal to provide such service to rural service areas is subject to the terms of the Stipulation. In addition, Telecon is granted authority to provide resold and non-facilities-based intrastate interLATA interexchange service and to originate and terminate toll traffic within the same LATA, as set forth herein, through the resale of intrastate Wide Area Telecommunications

Services (WATS), Message Telecommunications Service (MTS), directory assistance, travel card service or any other services authorized for resale by tariffs of carriers approved by the Commission.

2. Telecon shall file, prior to offering local exchange services in South Carolina, its final tariff of its local service offerings conforming to all matters discussed with Staff and comporting with South Carolina law in all matters. Telecon's local telecommunications services shall be regulated in accordance with the principles and procedures established for flexible regulation first granted to NewSouth Communications by Order No. 98-165 in Docket No. 97-467-C. Specifically, the Commission adopts for Telecon's competitive intrastate local exchange services a rate structure incorporating maximum rate levels with the flexibility for adjustment below the maximum rate levels that will have been previously approved by the Commission. Further, Telecon's local exchange service tariff filings are presumed valid upon filing, subject to the Commission's right within thirty (30) days to institute an investigation of the tariff filing, in which case the tariff filing would be suspended pending further Order of the Commission. Further, any such tariff filings will be subject to the same monitoring process as similarly situated competitive local exchange carriers.

3. The Commission adopts a rate design for the long distance services of Telecon which are consistent with the principles and procedures established for alternative regulation of business service offerings set out in Order Nos. 95-1734 and 96-55 in Docket No. 95-661-C.

Under the Commission approved alternative regulation, the business service offerings of Telecon, including consumer card services and operator services, are subject to a relaxed regulatory scheme identical to that granted to AT&T Communications in Order Nos. 95-1734 and 96-55 in Docket No. 95-661-C. However, pursuant to Order No. 2001-997 (Docket No. 2000-407-C), this Commission has modified alternative regulation by the re-imposition of rate caps with regard to certain “operator-assisted calls” where a customer uses a local exchange carrier’s calling card to complete calls from locations which have not selected that local exchange carrier as the toll provider. Order No. 2001-997, dated November 8, 2001, imposed a maximum cap of \$1.75 for operator surcharges for such calls, and a maximum cap of \$0.35 related to the flat per-minute rate associated with these calls. Under this relaxed regulatory scheme, tariff filings for business services shall be presumed valid upon filing. The Commission will have seven (7) days in which to institute an investigation of any tariff filing. If the Commission institutes an investigation of a particular tariff filing within the seven days, the tariff filing will then be suspended until further Order of the Commission. Any relaxation in the future reporting requirements that may be adopted for AT&T shall apply to Telecon also.

4. With regard to the interexchange residential service offerings of Telecon, the Commission adopts a rate design which includes only maximum rate levels for each tariff charge. A rate structure incorporating maximum rate levels has been previously adopted by the Commission. In Re: Application of GTE Sprint Communications Corporation, etc., Order No. 84-622, issued in Docket No. 84-10-C (August 2, 1984).

5. Telecon shall not adjust its interexchange residential rates below the approved maximum level without notice to the Commission and to the public. Telecon shall file its proposed rate changes, publish its notice of such changes, and file affidavits of publication with the Commission two weeks prior to the effective date of the changes. However, the public notice requirement is waived, and therefore not required, for reductions below the maximum cap in instances which do not affect the general body of subscribers or do not constitute a general rate reduction. In Re: Application of GTE Sprint Communications, etc., Order No. 93-638, issued in Docket No. 84-10-C (July 16, 1993). Any proposed increase in the maximum rate level for interexchange residential services reflected in the tariff which would be applicable to the general body of the Company's subscribers shall constitute a general ratemaking proceeding and will be treated in accordance with the notice and hearing provisions of S.C. Code Ann. §58-9-540 (Supp. 2002).

6. If it has not already done so by the date of issuance of this Order, Telecon shall file its revised interexchange long distance tariff within thirty (30) days of receipt of this Order. The revised tariff shall be consistent with the findings of this Order and shall be consistent with the Commission's Rules and Regulations.

7. Telecon is subject to access charges pursuant to Commission Order No. 86-584 in which the Commission determined that for access purposes resellers should be treated similarly to facilities-based interexchange carriers.

8. With regard to the Company's offering of interexchange services, an end-user should be able to access another interexchange carrier or operator service provider if the end-user so desires.

9. Telecon shall resell the services of only those interexchange carriers or LECs authorized to do business in South Carolina by this Commission. If Telecon changes underlying carriers, it shall notify the Commission in writing.

10. With regard to the origination and termination of toll calls within the same LATA, Telecon shall comply with the terms of Order No. 93-462, Order Approving Stipulation and Agreement, in Docket Nos. 92-182-C, 92-183-C, and 92-200-C (June 3, 1993), with the exception of the 10-XXX intraLATA dialing requirement, which has been rendered obsolete by the toll dialing parity rules established by the Federal Communications Commission, pursuant to the Telecommunications Act of 1996 (See, 47 CFR 51.209). Specifically, the Company shall comply with the imputation standard as adopted by Order No. 93-462 and more fully described in paragraph four of the Stipulation and Appendix B approved by Order No. 93-462.

11. The Company shall, in compliance with Commission regulations, designate and maintain an authorized utility representative who is prepared to discuss, on a regulatory level, customer relations (complaint) matters, engineering operations, tests and repairs. In addition, the Company shall provide to the Commission in writing the name of the authorized representative to be contacted in connection with general management duties as well as emergencies which occur during non-office hours.

Telecon shall file the names, addresses and telephone numbers of these representatives with the Commission within thirty (30) days of receipt of this Order. The Company shall utilize the “Authorized Utility Representative Information” form which can be located at the Commission’s website at [www.psc.state.sc.us/reference/forms.asp](http://www.psc.state.sc.us/reference/forms.asp) to file the names of these representatives with the Commission. Further, the Company shall promptly notify the Commission in writing if the representatives are replaced.

12. Telecon shall conduct its business in compliance with Commission decisions and Orders, both past and future, including but not limited to, any and all Commission decisions which may be rendered in Docket No. 96-018-C regarding local competition.

13. Title 23, Chapter 47, South Carolina Code of Laws Ann., governs the establishment and implementation of a “Public Safety Communications Center,” which is more commonly known as a “911 system” or “911 service.” Services available through a 911 system include law enforcement, fire, and emergency medical services. In recognition of the necessity of quality 911 services being provided to the citizens of South Carolina, the Commission hereby instructs Telecon to contact the appropriate authorities regarding 911 service in the counties and cities where the Company will be operating. Contact with the appropriate authorities is to be made before providing voice or dial tone telephone service in South Carolina. Accompanying this Order is an information packet from the South Carolina Chapter of the National Emergency Number Association (“SC NENA”) with contact information and sample forms. The Company may also obtain information by contacting the E911 Coordinator at the Office of

Information Resources of the South Carolina Budget and Control Board. By this Order and prior to providing voice or dial-tone services within South Carolina, Telecon shall contact the 911 Coordinator in each county, as well as the 911 Coordinator in each city where the city has its own 911 system, and shall provide information regarding the Company's operations as required by the 911 system.

14. The Company is directed to comply with all Rules and Regulations of the Commission, unless a regulation is specifically waived by the Commission.

15. Telecon's requested waiver of the requirement to file a copy of its bill form is denied. Telecon has not provided sufficient justification to warrant a finding that a waiver of this requirement is in the public interest. Therefore, Telecom is directed to file with the Commission a copy of its bill form.

Further, Telecon's request for a waiver of reporting requirements is likewise denied. Telecon will not be required to make any reporting requirements that are not required for similarly situated companies; however, the Commission's reporting requirements enable the Commission to maintain information on the entities operating within South Carolina and enable the Commission to make required assessments such as gross receipts taxes and USF contributions. Therefore, the Commission cannot find that a waiver of reporting requirements is in the public interest. The Commission would also note that a blanket request for waiver of reporting requirements is too vague and non-specific for the Commission to appropriately address.

16. The "Annual Report for Competitive Local Exchange Carriers" form can be located at the Commission's website at [www.psc.state.sc.us/reference/forms.asp](http://www.psc.state.sc.us/reference/forms.asp). This

form shall be utilized by the Company to file annual financial information with the Commission. Additionally, pursuant to the Commission's regulations, the Company shall file a "CLEC Service Quality Quarterly Report" with the Commission. The proper form for this report can be found at the Commission's website at [www.psc.state.sc.us/reference/forms/.asp](http://www.psc.state.sc.us/reference/forms/.asp).

Telecon shall file annual financial information in the form of annual reports and gross receipts reports as required by the Commission. The annual report and the gross receipts reports will necessitate the filing of intrastate information. Therefore, Telecon shall keep financial records on an intrastate basis for South Carolina in order to comply with the Commission's requirements of filing an annual report and a gross receipts report. The proper form for filing annual financial information for the annual report may be found on the Commission's website at [www.psc.state.sc.us/reference/forms.asp](http://www.psc.state.sc.us/reference/forms.asp). The title of this form is "Annual Report for CLECs" and/or "Annual Report for Interexchange Companies." The Company shall file the annual report form with the Commission by April 1<sup>st</sup> of each year.

Commission gross receipts forms are due to be filed with the Commission no later than August 31<sup>st</sup> of each year. The appropriate form for remitting information for gross receipts is entitled "Gross Receipts Form for Utility Companies" and may also be found on the Commission's website at [www.psc.state.sc.us/reference/forms.asp](http://www.psc.state.sc.us/reference/forms.asp).

17. The Federal Communications Commission (FCC) in July of 2000 required all telecommunications carriers throughout the United States to implement three-digit, 711, dialing for access to all Telecommunications Relay Services (TRS). The

Commission issued a memorandum in March of 2001 instructing all South Carolina telecommunications carriers to implement the service completely by October of 2001. All competitive local exchange carriers (CLECs) and incumbent local exchange carriers (ILECs) were instructed to include language in their tariffs introducing 711 as a new service offering with deployment by July 1, 2002, and to translate 711 dialed calls to 1-800-735-2905. All Payphone Service Providers (PSPs) were instructed to modify their programmable phones to translate calls dialed as 711 to their assigned TRS toll free number 1-800-735-2905 in order to route 711 calls to the TRS provider before October 1, 2001. Additionally, telephone directories were required to be updated and bill inserts promoting 711 were also required. This Company must comply with the applicable mandates. For complete information on compliance with this FCC and Commission requirement, go to the Commission's website at [www.psc.state.sc.us/reference/forms.asp](http://www.psc.state.sc.us/reference/forms.asp).

18. For good cause shown, Telecon is granted a waiver of the requirement under S.C. Code Ann. Regs. Reg. 103-610 that it be required to maintain its books and records in South Carolina. The Company shall maintain such records at its corporate headquarters in Johnstown, New York and shall, at its own expense, make its records and books available for inspection by the Commission or its staff at any time upon request.


19. For good cause shown, Telecon is granted a waiver and is hereby authorized to keep its books and financial records in accordance with Generally Accepted Accounting Practices rather than the Uniform System of Accounts method.

20. For good cause shown, Telecon is granted a waiver of the requirements that the Company publish and distribute a directory under S.C. Code Ann. Reg. 103-631

and that it file service area maps with the Commission. Telecon is ordered to contact the incumbent ILECs to ensure that the Company's customers are included in the applicable directory.

21. This Order shall remain in full force and effect until further Order of the Commission.

BY ORDER OF THE COMMISSION:



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Mignon L. Clyburn, Chairman

ATTEST:



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Bruce F. Duke, Acting Executive Director

(SEAL)

BEFORE  
THE PUBLIC SERVICE COMMISSION OF  
SOUTH CAROLINA

Docket No. 2003-226-C

Re: Application of Telecon Communications Corp. )  
for a Certificate of Public Convenience and )  
Necessity to Provide Resold and Facilities- )  
based Local Exchange and Interexchange )  
Telecommunications Services in the State of )  
South Carolina )

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**STIPULATION**

The South Carolina Telephone Coalition ("SCTC") (see attachment "A" for list of companies) and Telecon Communications Corp. ("Telecon") hereby enter into the following stipulations. As a consequence of these stipulations and conditions, SCTC does not oppose Telecon's Application. SCTC and Telecon stipulate and agree as follows:

1. SCTC does not oppose the granting of a statewide Certificate of Public Convenience and Necessity to Telecon, provided the South Carolina Public Service Commission ("Commission") makes the necessary findings to justify granting of such a certificate, and provided the conditions contained within this stipulation are met.

2. Telecon stipulates and agrees that any Certificate which may be granted will authorize Telecon to provide service only to customers located in non-rural local exchange company ("LEC") service areas of South Carolina, except as provided herein.

3. Telecon stipulates that it is not asking the Commission to make a finding at this time regarding whether competition is in the public interest for rural areas.

4. Telecon stipulates and agrees that it will not provide any local service, by its own facilities or otherwise, to any customer located in a rural incumbent LEC's service area, unless and

until Telecon provides such rural incumbent LEC and the Commission with written notice of its intent to do so at least thirty (30) days prior to the date of the intended service. During such notice period, the rural incumbent LEC will have the opportunity to petition the Commission to exercise all rights afforded it under Federal and State law. Also, Telecon acknowledges that the Commission may suspend the intended date for service in rural LEC territory for ninety (90) days while the Commission conducts any proceeding incident to the Petition or upon the Commission's own Motion, provided that the Commission can further suspend the implementation date upon showing of good cause.

5. Telecon stipulates and agrees that, if Telecon gives notice that it intends to serve a customer located in a rural incumbent LEC's service area, and either (a) the Commission receives a Petition from the rural incumbent LEC to exercise its rights under Federal or State law within such 30-day period, or (b) the Commission institutes a proceeding of its own, then Telecon will not provide service to any customer located within the service area in question without prior and further Commission approval.

6. Telecon acknowledges that any right which it may have or acquire to serve a rural telephone company service area in South Carolina is subject to the conditions contained herein, and to any future policies, procedures, and guidelines relevant to such proposed service which the Commission may implement, so long as such policies, procedures, and guidelines do not conflict with Federal or State law.

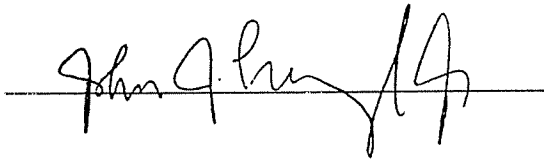
7. The parties stipulate and agree that all rights under Federal and State law are reserved to the rural incumbent LECs and Telecon, and this Stipulation in no way suspends or adversely affects such rights, including any exemptions, suspensions, or modifications to which they may be entitled.

8. Telecon agrees to abide by all State and Federal laws and to participate, to the extent it may be required to do so by the Commission, in the support of universally available telephone service at affordable rates.

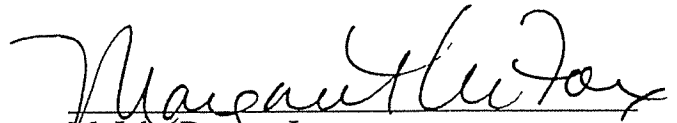
9. Telecon hereby amends its application and its prefiled testimony in this docket to the extent necessary to conform with this Stipulation.

AGREED AND STIPULATED to this 25<sup>th</sup> day of September, 2003.

Telecon Communications Corp.:

A handwritten signature in cursive script, appearing to read "John G. Bowen, Jr.", written over a horizontal line.

South Carolina Telephone Coalition:

A handwritten signature in cursive script, appearing to read "Margaret M. Fox", written over a horizontal line.

M. John Bowen, Jr.  
Margaret M. Fox  
McNAIR LAW FIRM, P.A.  
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Attorneys for the South Carolina Telephone  
Coalition

## ATTACHMENT A

### South Carolina Telephone Coalition Member Companies for Purposes of Local Service Stipulation

ALLTEL South Carolina, Inc.  
Chesnee Telephone Company  
Chester Telephone Company  
Farmers Telephone Cooperative, Inc.  
Ft. Mill Telephone Company  
Home Telephone Company, Inc.  
Lancaster Telephone Company  
Lockhart Telephone Company  
McClellanville Telephone Company  
Norway Telephone Company  
Palmetto Rural Telephone Cooperative, Inc.  
Piedmont Rural Telephone Cooperative, Inc.  
Pond Branch Telephone Company  
Ridgeway Telephone Company  
Rock Hill Telephone Company  
Sandhill Telephone Cooperative, Inc.  
St. Stephen Telephone Company  
West Carolina Rural Telephone Cooperative, Inc.  
Williston Telephone Company

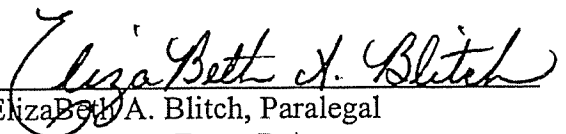
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based Local Exchange and Interexchange )  
Telecommunications Services in the State of )  
South Carolina )  
\_\_\_\_\_ )

I, ElizaBeth A. Blich, do hereby certify that I have this date served one (1) copy of the foregoing Stipulation upon the following party of record by causing said copy to be deposited with the United States Mail, first class postage prepaid to:

John J. Pringle, Jr., Esquire  
Ellis, Lawhorne & Sims, P.A.  
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(803) 799-9800

SEPTEMBER 26, 2003

Columbia, South Carolina